



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

RAYMOND EDUCATION SUPPORT
PERSONNEL, LOCAL 4823, AFT

Complainant

v.

RAYMOND SCHOOL BOARD

Respondent

CASE NO. M-0663:1

DECISION NO. 93-127

APPEARANCES

Representing Raymond Education Support Personnel, AFT:

Daniel Toomey, Staff Representative

Representing Raymond School Board:

Robert P. Leslie, Esq., Counsel

Also appearing:

Cheryl Stratchko, School District
Sandra Lee Ellis, School District
Meri-lyn Rousseau, School District
Angela Roe, Raymond Middle School
Andrea H. Worzel, Lamprey River Elem School

BACKGROUND

The Raymond Educational Support Personnel, AFT, Local 4823, AFL-CIO (Union) filed unfair labor practice (ULP) charges against the Raymond School Board (Board) on July 1, 1993 alleging violations of RSA 273-A:5 I (e) and RSA 273-A:3 relative to unilateral changes in working conditions during negotiations and the failure of the Board to bargain in good faith. The Union supplemented its ULP complaint by filing a Motion for an Order to Cease and Desist on July 15, 1993. The Board filed an answer on July 19, 1993. This matter, inclusive of the ULP and the Cease and Desist motion, was heard by the PELRB on September 7, 1993.

FINDINGS OF FACT

1. The Raymond School Board is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Raymond Educational Support Personnel, AFT, Local 4823, AFL-CIO is the duly certified bargaining agent for support personnel employed by the Board.
3. The Union, through the American Federation of Teachers, was certified as bargaining agent on September 24, 1992. Since that time to the date of these proceedings, the parties have been attempting to negotiate their first collective bargaining agreement (CBA). No settlement on that CBA had been reached as of the date of hearing.
4. Minutes of the Raymond School Board meeting held on June 17, 1993, reflect that the Board, unanimously following the Superintendent's recommendation, voted to reduce one secretarial position at the Lamprey River Elementary School from 260 days per year to 220 days per year (Worzel incumbent) and to increase one secretarial position at the Holmes Grove Middle School from 190 days per year to 220 days per year (Roe incumbent). There is no evidence that these changes had been noticed, placed on an agenda or discussed with the bargaining agent before they were raised, voted on and implemented on June 17, 1993.
5. June 18, 1993 was the last school day at the elementary school. On that day, Andrea Worzel, a school secretary hired two years ago as a full-time (260 days/year) secretary, learned of a change of hours for her position from 2080 hours per year to 1700 hours per year. Moving from a 260 day employee to a 220 day employee changed Worzel's benefits, e.g., it diminished her total annual earnings, eliminated paid vacation days, and stopped dental and life insurance. Thereafter, Worzel processed a grievance in accordance with the procedures set forth in the District's "Classified Employee's Handbook" without resolution satisfactory to her.
6. June 21, 1993 was the last school day at the middle school. On that day, Angela Roe, a school secretary hired in 1991, was told that her 1993-94 work year was being increased from 190 days per year to 220 days per year. After telling the

principal that she did not want the additional work days in her schedule, she was given her 1993-94 contract with the alternative of "sign it or quit." Having accepted the 220 day 1993-94 contract, Roe is now required to find and pay for a child care provider for the summer months. Roe was only given a half hour between the time she learned of her change in schedule for 1993-94 and the time she was required to return her contract.

7. On July 16, 1993, Helen Cascio, President of Local 4823, wrote to Ramona Stevens, Chair of the School Board, asking for a meeting with management's negotiating team "regarding terms and conditions of employment and benefit package for the two new 220 day secretarial positions recently created by the Raymond School Board."
8. On August 12, 1993, Superintendent Stratchko wrote to Cascio, telling her, "It is the intent of the Board to address this issue [involving the two secretarial positions] through this forum [the PELRB]." Notwithstanding that there were several meetings between the parties in July and August of 1993, after Cascio's letter of July 16th, neither the issue of wages and benefits for the two positions nor the impact of the changes voted and approved on June 17, 1993 was raised.

DECISION AND ORDER

We dispose of this case under Appeal of Franklin Education Association, 136 N.H. 332 (1992) since we find the operative facts to be similar. We sustain the charge of ULP for two reasons.

First, both cases involved situations where eleventh hour contracts were prepared by management, without consultation with the exclusive bargaining representative, and presented to the impacted employees under a "short fuse" deadline. In both instances employees who refused to sign these contracts risked losing their jobs. In Franklin, the time limit was eleven days and involved a successor CBA. In this case, involving an initial CBA, impacted employees were given a much shorter time, a matter of minutes or hours, to accept or reject the terms of their 1993-94 employment. Likewise, the exceedingly short time period in the instant case made it impractical, if not impossible, for impacted unit members to consult with a union representative before they had to return their employment contracts. Under the provisions of RSA 273-A:3 I neither party can compel the other to agree to a proposal or to make a concession, as noted by the Court in Franklin, 136 N.H. 332, 336 (1992). In Franklin, the individual employment contracts stated that they would be modified to conform to any

subsequently negotiated agreement, terms more liberal than the "take it or leave it" ultimatum invoked in this case. Of such a situation the New Hampshire Supreme Court has said, "The new contracts, once signed, bound the [employees] to the terms set by the school board until a new CBA was negotiated, thus giving the school board little incentive to agree to higher wages and instead encouraging it to prolong the negotiation process. The school board's actions unlawfully shifted the balance of power guaranteed by RSA chapter 273-A in favor of the school board." Franklin, 136 N.H. 332, 337 (1992). We find the same conditions to prevail here.

Second, we are concerned with the "direct dealing" between the Board and its agents and members of the bargaining unit. To be sure, the normal course of business envisions that management may present employment contracts to unit members without going through the certified bargaining representative. On the other hand, this process does not contemplate that these "dealings" may occur in such a manner as to change existing working conditions and to do so on such short notice as to preclude consultation with a union representative. The New Hampshire Supreme Court spoke to such conditions saying, "Dealing directly with employees is generally forbidden...because it seriously compromises the negotiating process and frustrates the purpose of the statues." Franklin, 136 N.H. 332, 335 (1992). The Court, citing to Federal precedent, said that the "employer has [a] duty...to give negotiations a fair chance to succeed and must consult and negotiate with [the] union before unilaterally changing terms of employment," Franklin, 136 N.H. 332, 336 (1992). (Emphasis added) We believe the same rule to apply in this case.

Based on the foregoing analysis, we find that the employer violated RSA 273-A:3 I and RSA 273-A:5 I (e) and in so doing committed unfair labor practices. By way of remedy, we direct (1) that the employer CEASE and DESIST from unfair labor practices described herein, (2) that it honor any request to bargain over the terms and conditions of employment of the two secretarial positions at issue herein, and (3) that it revert to the status quo ante until the parties have resolved the issue of terms and conditions of employment for these two positions through collective negotiations.

So ordered.

Signed this 11th day of OCTOBER, 1993.


 EDWARD J. HASELTINE
 Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
 Members Richard W. Roulx and Richard E. Molan present and voting.